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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 665

[Docket No. 110826540-1774-01]

RIN 0648-XA674

Western Pacific Fisheries; 2012 Annual Catch Limits and Accountability Measures

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Proposed specifications; request for comments.

SUMMARY: NMFS proposes annual catch limits for western Pacific bottomfish, crustacean, precious coral, and coral reef ecosystem fisheries, and accountability measures to correct or mitigate any overages of catch limits. The proposed catch limits and accountability measures support the long-term sustainability of fishery resources of the U.S. Pacific Islands.

DATES: Comments must be received by [insert date 15 days after date of publication in the FEDERAL REGISTER].

ADDRESSES: Comments on this proposed specification, identified by NOAA-NMFS-2011-0269, may be sent to either of the following addresses:

- Electronic Submission: Submit all electronic public comments via the Federal e-Rulemaking Portal www.regulations.gov; or
- Mail: Mail written comments to Michael D. Tosatto, Regional Administrator, NMFS, Pacific Islands Region (PIR), 1601 Kapiolani Blvd, Suite 1110, Honolulu, HI 96814-4700.

Instructions: Comments must be submitted to one of the two addresses to ensure that the comments are received, documented, and considered by NMFS. Comments sent to any other address or individual, or received after the end of the comment period, may not be considered. All comments received are a part of the public record and will generally be posted for public viewing on www.regulations.gov without change. All personal identifying information (e.g., name, address, etc.) submitted voluntarily by the sender may be publicly accessible. Do not submit confidential business information, or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word or Excel, WordPerfect, or Adobe PDF file formats only.

Three environmental assessments (EA) were prepared that describe the impact on the human environment that would result from this proposed action. Based on the EAs, NMFS prepared a

finding of no significant impact (FONSI) for the proposed action. Copies of the EAs and FONSI are available from www.regulations.gov.

FOR FURTHER INFORMATION CONTACT: Jarad Makaiau, NMFS PIR Sustainable Fisheries, 808-944-2108.

SUPPLEMENTARY INFORMATION: Fisheries in the U.S. Exclusive Economic Zone (EEZ, or Federal waters) around the U.S. Pacific Islands are managed under four archipelagic-based fishery ecosystem plans (FEP), including the American Samoa FEP, the Hawaii FEP, the Pacific Remote Islands FEP, and the Mariana FEP (covering Guam and the Commonwealth of the Northern Mariana Islands (CNMI)), and one FEP for pelagic fisheries. The FEPs were developed by the Western Pacific Fishery Management Council (Council) and implemented by NMFS under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Each FEP contains a process for the Council and NMFS to specify annual catch limits (ACLs) and accountability measures (AMs); that process is codified at 50 CFR 665.4 (76 FR 37285, June 27, 2011). The regulations require NMFS to specify, every fishing year, an ACL for each stock and stock complex of management unit species (MUS) included in an FEP, as recommended by the Council and in consideration of the best available scientific, commercial, and other information about the fishery. If an ACL is exceeded, the regulations

require the Council to take action to reduce the ACL for the subsequent fishing year by the amount of the overage, or take other actions, as appropriate.

Specification of Annual Catch Limits

NMFS proposes to specify ACLs for bottomfish, crustacean, precious coral, and coral reef ecosystem fishery MUS in American Samoa, Guam, the CNMI, and Hawaii. NMFS based the proposed specifications on recommendations from the Council at its 152nd meeting held on October 17-19, 2011. A total of 101 ACLs are proposed: 22 in American Samoa, 27 in Guam, 22 in the CNMI, and 30 in Hawaii. The ACLs would be specified for the 2012 fishing year which begins on January 1 and ends on December 31, except for precious coral fisheries which begin on July 1 and end on June 30 the following year.

NMFS is not proposing ACLs at this time for bottomfish, crustacean, precious coral, or coral reef ecosystem MUS in the PRIA because commercial fishing is prohibited out to 50 nautical miles by Presidential Proclamation 8336 which established the Pacific Remote Island Marine National Monument (74 FR 1565, January 12, 2009), and there is no habitat to support such fisheries in the EEZ beyond the monument boundaries. The Council is separately working on a draft amendment to the relevant FEP containing fishery management measures for the Pacific Remote Islands Marine National Monument (as well as the Rose Atoll and

Marianas Trench Marine National Monuments). Additionally, ACLs are not proposed for MUS that are currently subject to Federal fishing moratoria or prohibitions. They include all species of gold coral (73 FR 47098, August 13, 2008), all species of deepwater precious corals at the Westpac Bed Refugia (75 FR 2198, January 14, 2010), and the three Hawaii seamount groundfish: pelagic armorhead, alfonsin, and raftfish (75 FR 69015, November 10, 2010). The current prohibitions on fishing for these MUS serve as a functional equivalent of an ACL of zero.

NMFS is also not proposing ACLs for pelagic MUS at this time because it previously determined that pelagic species are subject to international fishery agreements or have a life cycle of approximately one year and, therefore, have statutory exceptions to the ACL requirements.

NMFS and the Council developed the proposed ACLs in accordance with the FEPs and Federal regulations. At its 152nd meeting, the Council recommended specifying the 2012 ACL for each FEP MUS as being equal to the acceptable biological catch (ABC) as recommended by the Council's Scientific and Statistical Committee (SSC) at the 108th SSC meeting held October 17-19, 2011, except for precious corals in Hawaii where the Council recommended maintaining the current harvest quotas (which are lower than the ABCs) as the ACLs. The Council did not recommend

increasing catch limits to equal the SSC's ABCs on the basis that there has been no activity in the precious coral fishery for over a decade and industry lacks the capacity to exploit an increased quota. The data, methods, and procedures considered by the SSC and the Council in developing their respective fishing level recommendations are described in detail in the three environmental assessments that support this action (see ADDRESSES).

Proposed Annual Catch Limit Specifications

Table 1. American Samoa

Fishery	Management Unit Species	Proposed ACL Specification
Bottomfish	Bottomfish multi-species stock complex	99,200 lb (44,996 kg)
Crustacean	Deepwater Shrimp	80,000 lb (36,287 kg)
	Spiny Lobster	2,300 lb (1,043 kg)
	Slipper Lobster	30 lb (14 kg)
	Kona Crab	3,200 lb (1,451 kg)
Precious Coral	Black Coral	790 kg (1,742 lb)
	Precious Corals in the American Samoa Exploratory Area	1,000 kg (2,205 lb)
Coral Reef Ecosystem	Acanthuridae - surgeonfish	19,516 lb (8,852 kg)
	Lutjanidae - snappers	18,839 lb (8,545 kg)
	<u>Selar crumenophthalmus</u> - atule or bigeye scad	8,396 lb (3,808 kg)
	Mollusks - turbo snail; octopus; giant clams	16,694 lb (7,572 kg)
	Carangidae - jacks	9,490 lb (4,305 kg)
	Lethrinidae - emperors	7,350 lb (3,334 kg)
	Scaridae - parrotfish	8,145 lb (3,695 kg)
	Serranidae - groupers	5,600 lb (2,540 kg)
	Holocentridae - squirrelfish	2,585 lb (1,173 kg)
	Mugilidae - mullets	2,857 lb (1,296 kg)

Fishery	Management Unit Species	Proposed ACL Specification
	Crustaceans - crabs	2,248 lb(1,020 kg)
	<u>Bolbometopon muricatum</u> - bumphead parrotfish	235 lb(107 kg)
	<u>Cheilinus undulatus</u> - Humphead (Napoleon) wrasse	1,743 lb(791 kg)
	Carcharhinidae - Reef Sharks	1,309 lb(594 kg)
	All Other CREMUS combined	18,910 lb(8,577 kg)

Table 2. Mariana Archipelago - Guam

Fishery	Management Unit Species	Proposed ACL Specification
Bottomfish	Bottomfish multi-species stock complex	48,200 lb(21,863 kg)
Crustaceans	Deepwater Shrimp	48,488 lb(21,994 kg)
	Spiny Lobster	2,700 lb(1,225 kg)
	Slipper Lobster	20 lb(9 kg)
	Kona Crab	1,900 lb(862 kg)
Precious Coral	Black Coral	700 kg(1,543 lb)
	Precious Corals in the Guam Exploratory Area	1,000 kg (2,205 lb)
Cora Reef Ecosystem	Acanthuridae - surgeonfish	70,702 lb(32,070 kg)
	Carangidae - jacks	45,377 lb(20,583 kg)
	<u>Selar crumenophthalmus</u> - atulai or bigeye scad	56,514 lb(25,634 kg)
	Lethrinidae - emperors	38,720 lb(17,563 kg)
	Scaridae - parrotfish	28,649 lb(12,995 kg)
	Mullidae - goatfish	25,367 lb(11,506 kg)
	Mollusks - turbo snail; octopus; giant clams	21,941 lb(9,952 kg)
	Siganidae - rabbitfish	26,120 lb(11,848 kg)
	Lutjanidae - snappers	17,726 lb(8,040 kg)
	Serranidae - groupers	17,958 lb(8,146 kg)
	Mugilidae - mullets	15,032 lb(6,818 kg)
	Kyphosidae - chubs/rudderfish	13,247 lb(6,009 kg)
	Crustaceans - crabs	5,523 lb(2,505 kg)
	Holocentridae - squirrelfish	8,300 lb(3,765 kg)
	Algae	5,329 lb(2,417 kg)
	Labridae - wrasses	5,195 lb(2,356 kg)
	<u>Bolbometopon muricatum</u> -	797 lb(362 kg)

Fishery	Management Unit Species	Proposed ACL Specification
	bumphead parrotfish	(CNMI and Guam combined)
	<u>Cheilinus undulatus</u> - Humphead (Napoleon) wrasse	1,960 lb(889 kg)
	Carcharhinidae - Reef Sharks	6,942 lb(3,149 kg)
	All Other CREMUS combined	83,214 lb(37,745 kg)

Table 3. Mariana Archipelago - CNMI

Fishery	Management Unit Species	Proposed ACL Specification
Bottomfish	Bottomfish multi-species stock complex	182,500 lb(82,781 kg)
Crustacean	Deepwater Shrimp	275,570 lb(124,996 kg)
	Spiny Lobster	5,500 lb(2,495 kg)
	Slipper Lobster	60 lb(27 kg)
	Kona Crab	6,300 lb(2,858 kg)
Precious Coral	Black Coral	2,100 kg (4,630 lb)
	Precious Corals in the CNMI Exploratory Area	1,000 kg (2,205 lb)
Coral Reef Ecosystem	Lethrinidae - emperors	27,466 lb(12,458 kg)
	Carangidae - jacks	21,512 lb(9,758 kg)
	Acanthuridae - surgeonfish	6,884 lb(3,123 kg)
	<u>Selar crumenophthalmus</u> - atulai or bigeye scad	7,459 lb(3,383 kg)
	Serranidae - groupers	5,519 lb(2,503 kg)
	Lutjanidae - snappers	3,905 lb(1,771 kg)
	Mullidae - goatfish	3,670 lb(1,665 kg)
	Scaridae - parrotfish	3,784 lb(1,716 kg)
	Mollusks - turbo snail; octopus; giant clams	4,446 lb(2,017 kg)
	Mugilidae - mullets	3,308 lb(1,500 kg)
	Siganidae - rabbitfish	2,537 lb(1,151 kg)
	<u>Bolbometopon muricatum</u> - bumphead parrotfish	797 lb(362 kg) (CNMI and Guam combined)
	<u>Cheilinus undulatus</u> - Humphead (Napoleon) wrasse	2,009 lb(911 kg)
	Carcharhinidae - Reef Sharks	5,600 lb (2,540 kg)
	All Other CREMUS combined	9,820 lb(4,454 kg)

Table 4. Hawaii

Fishery	Management Unit Species	Proposed ACL Specification
Bottomfish	Non-Deep 7 Bottomfish	135,000 lb(61,235 kg)
Crustacean	Deepwater Shrimp	250,773 lb(113,749 kg)
	Spiny Lobster	10,000 lb(4,536 kg)
	Slipper Lobster	280 lb(127 kg)
	Kona Crab	27,600 lb(12,519 kg)
Precious Coral	Auau Channel Black Coral	2,500 kg (5,512 lb)
	Pink/Bamboo Coral; Makapuu Bed	1,000/250 kg (2,205/551 lb)
	Pink/Bamboo Coral; 180 Fathom Bank	222/56 kg (489/123 lb)
	Pink/Bamboo Coral; Brooks Bank	444/111 kg (979/245 lb)
	Pink/Bamboo Coral; Kaena Point Bed	67/17 kg (148/37 lb)
	Pink/Bamboo Coral; Keahole Bed	67/17 kg (148/37 lb)
	Precious Corals in the Hawaii Exploratory Area	1,000 kg (2,205 lb)
Coral Reef Ecosystem	<u>Selar crumenophthalmus</u> - akule or bigeye scad	651,292 lb(295,421 kg)
	<u>Decapterus macarellus</u> - opelu or mackerel scad	393,563 lb(178,517 kg)
	Carangidae - jacks	193,423 lb(87,735 kg)
	Mullidae - goatfish	125,813 lb(57,068 kg)
	Acanthuridae - surgeonfish	80,545 lb(36,535 kg)
	Lutjanidae - snappers	65,102 lb(29,530 kg)
	Holocentridae - squirrelfish	44,122 lb(20,013 kg)
	Mugilidae - mullets	41,112 lb(18,648 kg)
	Mollusks - turbo snails; octopus; giant clams	28,765 lb(13,048 kg)
	Scaridae - parrotfish	33,326 lb(15,116 kg)
	Crustaceans - crabs	20,686 lb(9,383 kg)
	Carcharhinidae - Reef Sharks	111,566 lb(50,605 kg)
	All Other CREMUS combined	142,282 lb(64,538 kg)

Technical Corrections to Proposed ACL Specifications

NMFS identified several technical errors in the calculation of ABC for some MUS after the Council made their recommendations. Because the ABCs were derived from control rules and formulas contained in the FEPs, NMFS corrected the technical errors in this proposed specification by recalculating the ABCs based on the corrected information. NMFS has provided the corrected proposed ACL specifications to the Council's Executive Director and Chairperson for their review and concurrence that the corrected proposed ACL specifications are consistent with the Council's recommendation to establish ACLs for precious corals in Hawaii that are equal to current harvest quotas, and to establish ACL equal to ABC for all other fisheries. The resulting corrected ACL specifications are proposed here. Descriptions of the affected MUS, technical errors, and corrected ABC and ACL values are provided in the EAs, and summarized as follows:

Hawaii Deepwater Shrimp

The pre-corrected recommended ACL for Hawaii deepwater shrimp was equal to the ABC of 544,000 lb, which was based on the application of the Tier 4 control rule: $ABC = 0.91 \times$ (maximum sustainable yield (MSY)). The most current estimate of MSY for the deepwater shrimp in Hawaii is 125 mt/yr or 275,575

lb/yr (Tagami and Ralston 1988); however, in calculating ABC, the value for exploitable biomass (271.4 mt/yr or 598,328 lb) as estimated by Ralston and Tagami, (1992) was used instead of MSY. The resulting ACL recommendation of 544,000 exceeded the estimated MSY by more than 268,000 lb. NMFS corrected the ABC by applying the correct MSY value of 125 mt/yr or 275,575 lb/yr into the Tier 4 control rule, resulting in a corrected ABC of 250,773 lb. Consistent with the Council recommendation that ACL be set equal to ABC, NMFS proposes an ACL of 250,773 lb for Hawaii deepwater shrimp in 2012.

CNMI Deepwater Shrimp

The pre-corrected recommended ACL for CNMI deepwater shrimp was equal to the ABC of 268,000 lb, which was based on the application of the Tier 4 control rule: $ABC = 0.91 \times MSY$. The most current estimate of MSY for the deepwater shrimp in CNMI is 137.4 mt/yr or 302,830 lb/yr (Moffitt and Polovina 1987); however, in calculating ABC, the incorrect value for MSY was used (133.8 mt/yr or 294,975 lb/yr), resulting in an ABC of 268,000 lb. NMFS corrected the ABC by applying the correct MSY value of 137.4 mt/yr or 302,830 lb/yr in the Tier 4 control rule, resulting in a corrected ABC of 275,575 lb. Consistent with the Council recommendation that ACL be set equal to ABC, NMFS proposes an ACL of 275,575 lb for CNMI deepwater shrimp in 2012.

Guam Deepwater Shrimp

The pre-corrected recommended ACL for Guam deepwater shrimp was equal to the ABC of 56,000 lb which was based on the application of the Tier 4 control rule: $ABC = 0.91 \times MSY$. The most current estimate of MSY for the deepwater shrimp in Guam is 24.1 mt/yr or 53,116 lb/yr (Moffitt and Polovina 1987); however, in calculating ABC, the incorrect value for MSY was used (27.7 mt/yr or 61,067 lb/yr), resulting in an ABC of 56,000 lb. The resulting ACL of 56,000 lb exceeded the MSY estimated by Moffitt and Polovina (1987) by over 2,800 lb. NMFS corrected the ABC by applying the correct MSY value of 24.1 mt/yr into the Tier 4 control rule, resulting in a corrected ABC of 22 mt/yr or 48,488 lb/yr. Consistent with the Council recommendation that ACL be set equal to ABC, NMFS proposes to specify an ACL of 48,488 lb for Guam deepwater shrimp in 2012.

Hawaii Pink and Bamboo Corals

The recommended ACLs for Hawaii deepwater pink and bamboo corals at all established and conditional beds were set equal to the current harvest quotas as specified in 50 CFR 665 (75 FR 2198, January 14, 2010), except at the Makapuu Established Bed. At this bed, the current harvest quotas for pink and bamboo corals are 2,000 kg and 500 kg, respectively, and may be taken over a two year timeframe. However, since ACLs must be specified annually, the recommended ACLs were set at one half of the

current harvest quota, or 1,000 kg/yr and 250 kg/yr, respectively, and shown in Table 5.

Table 5. Council recommended ACLs for Hawaii pink and bamboo corals

Bed	Pink Coral ACL	Bamboo Coral ACL
Makapuu Established Bed	1,000 kg	250 kg
180 Fathom Bank Conditional Bed	222, kg	56 kg
Brooks Bank Conditional Bed	444 kg	111 kg
Kaena Point Conditional Bed	67 kg	17 kg
Keahole Point Conditional Bed	67 kg	17 kg

However, the Council's recommended ACL of 17 kg for bamboo corals at the Kaena Point and Keahole Point Conditional beds exceed the ABC of 16 kg as calculated by the SSC at its 108th meeting as shown in Table 6. In accordance with the Magnuson-Stevens Act and National Standard 1, the ACL may not exceed the ABC.

Table 6. SSC recommended ABCs for Hawaii pink and bamboo corals

Bed	Pink Coral ABC ($0.91*MSY$)	Bamboo Coral ABC ($0.91*MSY$)
Makapuu Established Bed	1,400 kg	260 kg

Bed	Pink Coral ABC (0.91*MSY)	Bamboo Coral ABC (0.91*MSY)
180 Fathom Bank Conditional Bed	1,400 kg	260 kg
Brooks Bank Conditional Bed	1,400 kg	260 kg
Kaena Point Conditional Bed	85 kg	16 kg
Keahole Point Conditional Bed	85 kg	16 kg

The ABCs were based on the application of the Tier 4 control rule: $ABC = 0.91 \times MSY$. In calculating ABC for pink coral at the Makapuu Established Bed, the SSC applied a revised estimate of MSY for pink coral reported in Grigg (2002). Specifically, Grigg (2002) estimated an MSY for pink coral at the Makapuu bed of 1,500 kg/year. In calculating ABC for bamboo coral at the Makapuu Established bed, the SSC relied on the MSY estimate of 285 as provided in the Hawaii FEP. Based on these MSY estimates the SSC calculated ABC for pink coral and bamboo coral at the Makapuu bed as 1400 kg/yr and 260 kg/yr, respectively.

There are no MSY estimates for pink or bamboo coral at any conditional beds. Therefore, to calculate an MSY proxy for pink coral and bamboo coral for these beds, the SSC applied the formula provided in the Hawaii FEP which was used to set the

existing harvest quotas. Specifically, the Hawaii FEP explains that the harvest quotas for pink and bamboo corals at any conditional bed is extrapolated, based on bed size, by comparison with that of the Makapuu Established Bed using the following formula:

$$\frac{\text{MSY for Makapuu Bed}}{\text{Area of Makapuu Bed}} = \frac{\text{MSY for Conditional Bed}}{\text{Area of Conditional Bed}}$$

Framework Amendment 1 to the Precious Corals FMP (WPFMC 2001) defines the bed area for all established and conditional beds in Hawaii and defines the Makapuu Established Bed as 3.60 km², and both the Keahole Point and Kaena Point Conditional Beds as 0.24 km². However, in calculating the MSY proxies for pink and bamboo corals at Keahole Point and Kaena Point Conditional Beds, incorrect values for the Makapuu Established Bed area (12.57 nm²) and both the Keahole and Kaena Point Conditional Bed area (0.79 nm²) were used in the formula above resulting in a bamboo coral MSY proxy of 18 kg/yr for the two latter beds. Applying the Tier 4 control rule (ABC = 0.91 x MSY) resulted in an ABC of 16 kg for both Keahole Point and Kaena Point Conditional Beds.

NMFS corrected the ABCs by applying the correct bed area for Makapuu (3.60 km²) and for both Keahole Point and Kaena Point (0.24 km²) into the formula above, resulting in a corrected bamboo coral MSY proxy of 19 kg for the two latter beds. Next, NMFS applied the Tier 4 control rule (ABC = 0.91 x

MSY), resulting in a corrected ABC of 17 kg. These technical corrections are consistent with the intent of the SSC and Council and represent the best available scientific information regarding Hawaii precious corals. Additionally, the technical corrections allow for the Council's recommended ACL of 17 kg for bamboo corals at the Kaena Point and Keahole Point Conditional Beds to be acceptable ACLs as they no longer exceed ABC.

Proposed Accountability Measures

Each fishing year, NMFS and local resource management agencies in American Samoa, Guam, the CNMI, and Hawaii will collect information about MUS catches and apply them toward the appropriate ACLs. Pursuant to 50 CFR 665.4, when the ACL for a stock or stock complex is projected to be reached, based on available information, NMFS must notify permit holders that fishing for that stock or stock complex will be restricted in Federal waters on a specified date. The restriction serves as the AM to prevent an ACL from being exceeded and may include, but is not limited to closure of the fishery, closure of specific areas, changes to bag limits, or restrictions in effort. However, local resource management agencies presently do not have the personnel or resources to process catch data in near-real time, so fisheries statistics are generally not available to NMFS until at least six months after the data has been collected. While the State of Hawaii has the capability to

monitor and track the catch of seven preferentially-targeted bottomfish species in near-real time in comparison with previously specified ACLs (76 FR 54715, September 2, 2011), additional resources would be required to extend these capabilities to other bottomfish, crustacean, precious coral, and coral reef ecosystem MUS. Significant resources would also be required to support the establishment of in-season monitoring and tracking capabilities in American Samoa, Guam and the CNMI. Additionally, reliance on federal logbook and reporting from federal waters will not be sufficient in accurately monitoring and tracking catches towards the proposed ACL specifications as the majority of fishing for bottomfish, crustacean, precious coral, and coral reef ecosystem fishery MUS occurs primarily in non-federal waters generally 0-3 nautical miles from shore. For these reasons, NMFS proposes to implement the Council's recommended AM, which requires the Council to conduct a post-season accounting of the annual catch for each stock and stock complex of MUS relative immediately after the end of the fishing year. If an ACL is exceeded, the Council would take action in accordance with 50 CFR 600.310(g) which may include a recommendation that NMFS reduce the ACL for the subsequent fishing year by the amount of the overage, or other measure, as appropriate.

NMFS will consider public comments on the proposed ACLs and AMs and will announce the final specifications as soon as possible. Regardless of the final ACL specifications and AMs, all other management measures will continue to apply in the fisheries. To be considered, comments on these proposed specifications must be received by [insert date 15 days after date of publication in the FEDERAL REGISTER], not postmarked or otherwise transmitted by that date.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator for Fisheries has determined that this proposed specification is consistent with the applicable western Pacific FEPs, other provisions of the Magnuson-Stevens Act, and other applicable laws, subject to further consideration after public comment.

Certification of Finding of No Significant Impact on Substantial Number of Small Entities

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that these proposed specifications, if adopted, would not have a significant economic impact on a substantial number of small entities. A description of the action, why it is being considered, and the

legal basis for it are contained in the preamble to this proposed specification.

NMFS based the proposed specifications on recommendations from the Western Pacific Fishery Management Council (Council) at its 152nd meeting held on October 17-19, 2011. A total of 101 ACLs are proposed: 22 in American Samoa, 27 in Guam, 22 in the CNMI, and 30 in Hawaii. The ACLs would be specified for the 2012 fishing year, which begins on January 1 and ends on December 31, except for precious coral fisheries. These measures would apply to precious coral fisheries from July 1, 2011 - June 30, 2012. Some ACLs would be applied to fisheries for which there are no participants. These include certain crustacean fisheries (i.e., deepwater shrimp and Kona crab), and all precious coral fisheries outside Hawaii.

Fishery participants should not face any adverse economic impacts as a direct result of the proposed ACLs and AMs. The Council and NMFS are not considering in-season closures in any of the fisheries to which these ACLs apply, due to the current inability of fishery management entities to conduct in-season tracking of catch in relation to the ACLs. As a result, participants in these fisheries would be able to fish throughout the entire season; in addition, the ACLs, as proposed, would not change the gear types, areas fished, effort, or participation of the fishery during the 2012 fishing season. A post-season review

of the catch data would be required to determine whether any of those ACLs is exceeded. If any of the ACLs is exceeded, the Council and NMFS would take action to correct the operational issue that caused the ACL overage. NMFS cannot, however, speculate on operational measures or the magnitude of any potential overage adjustment; therefore, the environmental and socio-economic impacts of future actions, such as changes to future ACLs or AMs, would need to be evaluated separately once the required data are available.

Other alternatives that were considered but not selected called for alternative specifications for the 101 ACLs, some higher and some lower than those that were proposed. However, because in-season tracking of catch data cannot be achieved in these fisheries, in-season AMs such as a fishery closure are not possible, and fishery participants would be able to fish throughout the entire season under all alternatives considered. Therefore, the direct economic impacts to small entities during the 2012 fishing season would not likely differ among the alternatives.

As described earlier, the proposed action of specifying ACLs and AMs is expected to have little, if any, direct adverse economic impact. For fisheries with active participants, the ACLs are generally in line with or greater than the current annual yields and there should be no disproportionate economic

impacts between large and small entities. Furthermore, there is likely to be no disproportionate economic impacts among the universe of vessels based on gear, home port, or vessel length. Because the proposed action would have little to no direct economic impact, NMFS has determined that this proposed rule will not have a significant economic impact on a substantial number of small entities, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 605(b).

As a result, an initial regulatory flexibility analysis is not required and none has been prepared.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

Authority: 16 U.S.C. 1801 et seq.

Dated: December 27, 2011.

Samuel D. Rauch III,
Deputy Assistant Administrator for Regulatory Programs,
National Marine Fisheries Service.

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